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JAN 20 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Taras et al.

Group Art Unit: 3731

Serial No.: 10/076,678

Examiner: Jessica Baxter

Filed: Feb. 15, 2002

Attorney Docket: TAR-001

Title: Distraction Pin for Fracture Fixation

I hereby certify that this correspondence is being transmitted by facsimile on
this day to 703-305-3590 to Commissioner for Patents, Alexandria, VA 22313.

David S. Jacobson
David S. Jacobson
Reg. No. 39,235

1/20/04
Date

Honorable Commissioner for Patents
Alexandria, VA 22313

Sir:

This is a timely reply to a Restriction Requirement dated September 13,
2004. As no claims have been added, and no extension fee is required, no fees are
enclosed herewith. If any fee is due, please charge the fee to deposit account no. 07-
1732.

OFFICIAL

T.A.
1-22-04
#11/D
fuhr

ELECTION WITH TRAVERSE

The applicant hereby elects, with traverse, claims 1-15, 18-20 and 23-30 drawn to a fracture fixation pin.

The bases for traversal of the election requirement are as follows. First, the Examiner's action is in contravention of the MPEP as the restriction requirement was made *after* a final action, and pursuant to 37 CFR 1.142 and MPEP Section 802, a restriction requirement may only be made *prior* to a final action. Second, the Examiner's action is in contravention of MPEP Section 811 as the restriction requirement was not made in a timely manner and the MPEP requires the restriction requirement to be made *as soon as the need for [it] develops*. No amendment has been made to the claims to cause the need to develop at this late stage of prosecution. The inventions identified by the Examiner have been in the case since the case was filed. Third, pursuant to MPEP Section 803, there is no serious burden placed on the Examiner by searching both inventions.